



CHANGING TIDES:

Lobbying on Cannabis Issues
in the Biden Administration

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HARRIS | BRICKEN



CAPITOL HILL
POLICY GROUP

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Overview

- New Opportunities for Action at the Dawn of the Biden-Harris Administration
- Summary of Previously Introduced Federal Legislation
- Focus on Tax, Banking and Regulatory Issues
- Political Outlook in the 117th Congress
- Concerns about Current Lobbying Activity
- Organizing and Next Steps

New Opportunities for Advancing Cannabis Legislation

- During his primary campaign, President Biden did not support the federal legalization of recreational marijuana
- But during the general-election campaign, he shifted his tone and stated that marijuana should be decriminalized and that states should decide whether to legalize it for recreational use
- Vice President Harris said their administration “will decriminalize marijuana, and we will expunge the records of those who have been convicted of marijuana” related crimes.
- Senator Schumer, now the new Majority Leader, has explicitly discussed marijuana reform in past years and has made legalization part of his criminal justice reform priorities
- Nancy Pelosi will remain Speaker of the House and has continuously advanced marijuana reform legislation
- However, Dems have slim majorities in both the House (222/211) and the Senate (50/50 with VP Harris the tie breaking vote), and any legislation will likely need bipartisan support to pass other than through budget reconciliation process

Prior Legislation - 2018 Farm Bill & Hemp

- In December of 2018, Donald Trump signed the Farm Bill which explicitly removed hemp from the list of federally banned drugs under the Controlled Substances Act
 - Cannabis plants must contain less than 0.3 percent THC in order to be classified as hemp, effectively eliminating its psychoactive impacts
- Although hemp will no longer be in the jurisdiction of the Department of Justice, prospective growers will have to submit cultivation plans to the U.S. Department of Agriculture (USDA), either through the state government, a tribal government, or the USDA itself
- The 2018 Farm Bill did not amend the Food, Drug, and Cosmetic Act to permit the use of hemp or hemp-derived products in dietary supplements
- Hemp plan rules recently finalized by USDA

Prior (Non) Regulation - Cannabidiol (CBD)

- FDA has said it is using enforcement discretion when it comes to CBD products that are already widely available in markets across the U.S.
- Only businesses making especially outlandish claims about the therapeutic benefits of the cannabis products are being targeted for the time being, with the agency sending a series of warning letters to select companies
- To amend the Federal Food, Drug, and Cosmetic Act with respect to the Regulation of Hemp-derived Cannabidiol and Hemp-derived Cannabidiol Containing Substances Act
 - Introduced by Rep. Collin Peterson (D-MN) January of 2020
 - This bill allows the use of hemp, CBD derived from hemp, or any other ingredient derived from hemp in a dietary supplement, provided that the supplement meets other applicable requirements.
- Hemp and Hemp-Derived CBD Consumer Protection and Market Stabilization Act of 2020
 - Introduced by Rep. Kurt Schrader (D-OR) September of 2020
 - Similarly, would have included CBD in the definition of dietary supplements under the Food, Drug and Cosmetic Act

Legislation Introduced in the 116th Congress

- The Marijuana Opportunity Reinvestment and Expungement (MORE) Act, introduced by then-Sen. Kamala Harris and Rep. Jerry Nadler, decriminalizes marijuana, expunges prior convictions, and establishes a tax on cannabis products, the revenues of which would be deposited in a trust fund to support various social programs and services from individuals and businesses in communities impacted by the war on drugs. The MORE Act passed the House, marking the first time a chamber of Congress approved legislation to end federal marijuana prohibition, but did not make it out of Committee for Senate vote
- The Marijuana Freedom and Opportunity Act, introduced by Sen. Chuck Schumer and Rep. Hakeem Jeffries decriminalizes marijuana, encourages State expungement of prior convictions, and establishes a trust fund to assist women-owned and minority-owned marijuana businesses
- The Marijuana Justice Act, introduced by Sen. Cory Booker and Rep. Barbara Lee, decriminalizes marijuana, expunges prior convictions, and incentivizes states through the use of federal funds to change their marijuana laws if those laws were shown to have a disproportionate effect on low-income individuals and/or people of color

Legislation Introduced in the 116th Congress Cont.

- The Ending Federal Marijuana Prohibition Act, Introduced by former-Rep. Tulsi Gabbard, would decriminalize marijuana and eliminate penalties for those who transportation marijuana between states where it is legalized. Initially introduced in 2011, introduced in every subsequent Congress
- The STATES Act, introduced by Rep. Earl Blumenauer and Sen. Elizabeth Warren, would prevent Federal interference with states that had legalized marijuana and provide that banks conducting law-complying transactions with cannabis-related companies would not constitute trafficking. The banking provisions of the STATES Act have been reintroduced as the SAFE Banking Act
- The Secure and Faire Enforcement (SAFE) Banking Act, Introduced by Rep. Ed Perlmutter and Sen. Jeff Merkley, prohibits a federal banking regulator from penalizing a depository institution for providing banking services to a legitimate cannabis business. The SAFE Banking Act passed the House but never made it out of Senate Committee.

Legislation Introduced in the 117th Congress

- The Marijuana 1-to-3 Act, introduced by Rep. Greg Steube, would reclassify marijuana from a schedule I drug to a schedule III drug under the Controlled Substances Act, allowing for increased research and study. Reclassifying marijuana would allow for increased research and study of the drug.
- Veterans Cannabis Use for Safe Healing Act, introduced by Rep. Greg Steube, enshrines in law that military veterans aren't penalized for using medical cannabis in compliance with state law.
- Rep. Ed Perlmutter has reintroduced the SAFE Banking Act.
- Rep. Jerry Nadler plans to refile the MORE Act this Congress.

Regulation Will Precede Decriminalization

- Federal decriminalization or legalization will not unfold as it has in many states
 - It will occur after, not before the creation of a well established federal regulatory environment
- Building out cannabis regulation will involve a major lobbying campaign
- Large tobacco companies helped craft the highly regulated environment they operate within
 - It has become cost prohibitive for smaller players to survive in the tobacco industry.
- Banking reforms are most likely in the short-term
 - SAFE Act has passed the House but is just a first step
 - Will credit card processors come along without decriminalization?

This Comes at a Cost (Tax)

- 280e tax reform is possible, but unlikely to move as a stand-alone measure
 - Could theoretically happen via budget reconciliation, but obstacles abound.
 - No budget score currently exists.
 - Currently it amounts to a tax cut for an illegal product in an environment where the government is seeking revenue.
 - Unlikely to move without a corresponding imposition of a cannabis excise tax.
- Federal excise tax could take varying forms and would be a focus of intense lobbying
 - Ultimate rate is highly likely to be much higher than the 5% rate proposed in House passed MORE Act.
 - Timing suggests, messaging bill.
 - Relevant committees have not held hearings on a potential cannabis tax.
 - Could be based on potency (as with alcohol), weight (as with tobacco), or ad valorem (as with MORE Act).
 - Alcohol taxes are lower for small producers, while tobacco has one rate.

New Administration and Congress – Policy and Political Outlook

- New Administration – Policy Priorities
 - COVID Response
 - Building Back Better Agenda
 - Other Priorities
- Congressional Outlook
 - Overview of 117th Congress
 - Any hope for bipartisan bills?
 - Marijuana/cannabis outlook

Concerns About Current Lobbying

- Large companies including Altria have entered the lobbying space to influence cannabis legislative development
- Lessons can be learned from federal regulation of alcohol and tobacco
- Family Smoking Prevention and Tobacco Control Act of 2009
 - Federal regulation embraced by large companies
 - Costs of regulation significant
 - Detrimental effect on smaller companies
- Similar dynamics could play out with Cannabis legislation
 - Could affect the viability of small to medium size enterprises
- But active lobbying could support smaller enterprises, e.g. varied alcohol excise tax rates

Organizing Political Action

- Interested companies and entrepreneurs cannot afford to simply watch legislative activity by others in the 117th Congress
- We are willing to engage on cannabis lobbying efforts
 - Stand-alone client engagements
 - Coalition of several firms to share costs and leverage engagement impact
- For further discussions, please contact us at your earliest convenience!

Any Questions? Please contact us



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